in this Commonwealth, and is stated by Metcalf, J., by way of illustration, in a very recent case. In case of imprisonment, a jailor is not answerable, "unless he acts under the mandate of an inferior court, which has not jurisdiction of the cause, or by virtue of a warrant, which, on its face, shows the magistrate's want of jurisdiction." *Folger* vs. *Hinckley*, 5 Cush. 266.

The law relied on for a justification, being void, gave the magistrate no jurisdicton and no authority to issue the search-warrant, the officer cannot justify the seizure under it and therefore an action lies against him for the taking.

Judgment for the plaintiff.

Court of Appeals of Maryland, June Term, 1853.

NATHAN H. WARE ET AL. *vs.* CHARLES R. RICHARDSON.

1. In cases of devises or conveyances to trustees for the *separate use of married women*, the Court will, if possible, so construe them as to vest the legal estate in the trustees, because this will best effectuate the intention of the donor.
2. A deed conveyed real estate to a trustee "*in trust*," that a married woman "shall and may, during her life, have, hold, use, occupy and enjoy" the same, "and the rents, issues and profits thereof," "to her own proper use and benefit notwithstanding her coverture, and that without the let, trouble or control of her present or any future husband," or being liable for his debts, "as fully in every respect as if she was sole and unmarried, and from and immediately after her death, then to *and for the use and benefit of her legal heirs and representatives*." *Held:* That this deed created but a mere equitable life estate in the married woman, and that it executed the legal estate in her heirs and, consequently that the rule in Shelley's case did not apply.

Appeal from the Equity side of the Baltimore County Court.

The facts of the case sufficiently appear in the opinion of the Court.

T. S. Alexander and T. Y. Walsh, for appellants.

W. H. Norris, for appellees.

MASON, J.—This case has been argued most elaborately and with distinguished ability. Every suggestion appears to have been made and every authority invoked calculated to elucidate the intricate questions involved in the present controversy. With the benefit of

all this light, we are constrained nevertheless to recognize the difficulties which environ the case.

In order to a proper understanding of the case, we deem it important to state somewhat at length the allegations of the bill, and the subsequent proceedings thereon.

The appellee, Charles Richardson, filed his bill of complaint in Baltimore County Court, as a court of equity, against the appellants, asking for a sale of the real estate of Eliza Richardson, deceased, for the payment of her debts. He claimed to be a creditor in his own right, and also as administrator *de bonis non* of Robert Richardson, deceased. The bill alleges that letters testamentary were granted on the estate of the said Robert to the said Eliza Richardson, who, by virtue thereof, possessed herself of the personal estate of her testator, and partially administered the same, but died before she had returned any account of her admistration. The complainant thereupon administered upon her estate, and also upon the estate *de bonis non* of Robert Richardson. The bill charges that Mrs. Richardson died largely indebted; and that her personal estate was insufficient to pay her debts, and thereupon prays the sale of her real estate under the direction of the chancery court; and that the proceeds of sale may be appropriated to the payment of her debts.

The real estate which the complainant seeks to charge with the debts of Mrs. Richardson, was derived by the deed of Areanah Kennedy, executed in the year 1802, to Samuel N. Ridgely, which is set out at length in the record. That deed is, in part, in these words: "witnesseth, that the said Areanah Kennedy, in consideration of the natural love and affection which she hath and beareth towards Elizabeth Richardson, wife of Robert Richardson, and in consideration of the sum of five shillings, current money, to her in hand paid by the said Samuel N. Ridgely, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents doth grant, bargain and sell, alien, enfeoff, release, convey and confirm unto the said Samuel N. Ridgely, his heirs and assigns," (here the

property is described,) " to have and to hold the same and every part thereof unto the said Samuel N. Ridgely, his heirs and assigns forever, in trust, nevertheless that the said Areanah Kennedy shall and may, during the time of her natural life, have, hold, use and enjoy the said piece or parcel of ground and premises, and the rents, issues and profits thereof, and the same convert to her own use and benefit, and from and immediately after her decease, then upon this further trust, that the said Elizabeth Richardson shall and may during her life, have, hold, use, occupy, possess and enjoy the said piece or parcel of ground and premises, and the rents, issues, and profits thereof, and the same to convert to her own proper use and benefit, notwithstanding her coverture, and that without the let, trouble or control of her present or any future husband, or being in any manner liable or subject to the payment of his debts, as fully in every respect as if she was sole and unmarried, and from and immediately after the death of the said Elizabeth, then to and for the use and benefit of the legal heirs and representatives of the said Elizabeth, and to and for no other intent and purpose.

The defendants in their answer insist, that under the terms of the foregoing deed, the said Eliza had but a life estate in the premises thereby conveyed, and that on her death the fee devolved upon her children and heirs, namely: the complainant and his deceased brother. The first question, therefore, which is presented by the present record is, whether Elizabeth Richardson had a fee or a life estate in the realty embraced in the deed from Areanah Kennedy.

In determining this question we must first consider whether the rule established in *Shelley's case*, applies to the deed which we are now called on to construe.

No question connected with the law has elicited more learning and discussion than that which relates to the nature and operation of this rule, as a principle of law for the interpretation of wills and deeds; and none occupies a more prominent place in the history of the law of real property.

The controversies on this subject from the earliest periods down to the present day, have been vehement protracted and even bitter,

eliciting the profoundest logic, severest criticism, and deepest and most laborious research. In one instance, even, this controversy resulted in the dismemberment of the Court of King's Bench, and at another time this renowned discussion, says Chancellor Kent, became so vehement and protracted as to rouse the sceptre of the haughty Elizabeth. The great case for example of *Perrin* vs. *Blake*, 4 Burr. 2579, which excited the most noble and illustrious talents of the age in its discussion through every department of Westminster Hall, originated in the island of Jamaica, as far back as the year 1746. After the case had traveled through the courts of that island, it passed the Atlantic on appeal to the King in council. The final termination (the result at the last of compromise) of this protracted litigation was in 1777, after an exhausting controversy of upwards of thirty years. When Lord Mansfield delivered his opinion in *Perrin* vs. *Blake*, he used certain sarcastic expressions which gave offence to his associate, Mr. Justice Yates, who immediately thereupon resigned his seat as a judge of K. B., and was transferred to the C. B. Though volumes have been written upon the subject, and more than a century expended in its investigation, still it to this day remains a fruitful subject of strife and discussion, as the present case abundantly illustrates.

In *Shelley's case*, 1 Co. 104, the rule was laid down, on the authority of a number of cases from the Year Books, to be, "that when the ancestor, by any gift or conveyance taketh an estate of freehold, and in the same gift or conveyance an estate is limited either mediately or immediately, to his heirs, in fee or in tail, *the heirs* are words of limitation of the estate, and not words of purchase." Chancellor Kent, however, adopts the following definition of the rule by Mr. Preston, as being more full and accurate. "When a person takes an estate of freehold, legally or equitably, under a deed, will or other writing, and in the same instrument there is a limitation by way of remainder, either with or without the interposition of another estate, of an interest of the same legal or equitable quality, to his heir, or heirs of his body, as a class of persons to take in succession, from generation to genera-

tion, the limitation to the heirs entitles the ancestor to the whole estate." Preston on Estates, vol. 1, 263.

In cases, therefore, where the words "heirs" or "heirs of the body" are used they will be construed to limit or define the estate intended to be conveyed, and will not be treated as words of purchase, and no supposed intention on the part of the testator or grantor arising from the estate being conveyed, in the first instance, for life, will be permitted to control their operation as words of limitation. In all such cases the estate becomes immediately executed in the ancestor, who becomes seised of an estate of inheritance. By force of the unbending construction given to these terms, it imputed to the grantor or testator in legal contemplation, an intention to use the terms in their legal sense, and to give them their legal effect, though it should defeat even a real intention to the contrary. In other words, they are regarded as conclusive evidence of the intent of the testator.

There are, however, well recognized exceptions to this rule: two of which we will advert to at present, in general terms. In the first place, whenever the testator or grantor annexes words of explanation to the word "heirs," indicating that he meant to use the term in a qualified sense, as a mere *descriptio personarum*, or particular designation of certain individuals, and that *they* and not the ancestor were to be points or *termini* from the succession to the estate was to eminate or take its start, then in all such cases where the word *heir* is thus explained or restricted, it is to be treated as a term of purchase and not of limitation. For example, the expressions, *heirs now living*, *children*, *issue*, *&c.*, are words of limitation or purchase, as will best accord with the manifest intention of him who employs them. Under this qualification of the rule the intention prevails against the strict construction.

The second exception to which we will advert is, that where the estate limited to the ancestor is an equitable or trust estate and that to the heirs an executed use or legal estate, the two estates under the rule in *Shelley's case* will not coalesce in the ancestor; and the result would be the same if the estate for life was a legal estate,

and that limited to the heirs an equitable estate. *Horne* vs. *Lyeth*, 4 Har. & Johns. 432.

Whatever may have been the origin or philosophy of this rule, whether it was introduced to secure to the lord of the fee the fruits and incidents of wardship and marriage which he had a right to claim from the heir; or whether the more reasonable idea of Mr. Justice Blackstone be correct, that the rule had its origin in the desire to facilitate the alienation of land, and to throw it into the track of commerce one generation sooner, by giving the power to the ancestor of immediate disposition of the estate to the exclusion of the heirs, the rule with its qualifications must nevertheless prevail as a part of our system of real law, because it has been fully recognized and adopted as the settled law of Maryland. The court in *Horne* vs. *Lyeth* say, "to disregard rules of interpretation sanctioned by a succession of ages, and by the decisions of the most enlightened judges, under pretence that the reason of the rule no longer exists, or that the rule itself is unreasonable, would not only prostrate the great land marks of property, but would introduce a latitude of construction, boundless in its range and pernicious in its consequences.

The rule applies clearly to the deed we are now considering, unless it can be shown that it falls within one of the other of the enumerated exceptions. Did, then, Mrs. Kennedy use any apt words in the deed to indicate that the heirs of Mrs. Richardson, and not she herself, were to be the *termini* from which the succession was to commence, and thereby create in Mrs. Richardson a mere life estate? In other words, are there any expressions in the deed sufficient to convert the words "legal heirs," from words of limitation into words of purchase? There are none in our opinion capable of restricting the terms to particular individuals, instead of the entire legal representatives of Mrs. Richardson as a class. On the contrary the language employed is of the most general character, and is indeed as full and as comprehensive as that employed in *Shelley's case* itself, and we cannot suppose that it will be seriously contended that the present deed, if it were a conveyance directly to Mrs. Richardson herself, without the interposition

of the trustee, and she was a *feme sole*, would not be embraced within the operation of the rule.

But in the second place, it is contended that under the peculiar provisons of the present deed an estate of a different nature has been created in Mrs. Richardson, from that conferred upon her heirs, and that therefore the two will not incorporate in Mrs. Richardson, thus bringing the case within the operation of the second exception to the rule.

To avoid such a conclusion it is argued by the appellee on the one hand, that the present instrument is a deed of bargain and sale, and that as such, the use was executed in Ridgely the trustee, and that the limitations to use, are mere trusts in equity, and that both Mrs. Richardson and her heirs are *cestui que trusts* seised only of an equitable estate, and that as such they will coalesce in Mrs. Richardson under the rule. On the other hand, it is contended that the intention of the grantor should prevail, and that the present deed should be treated as a *feoffment* to accomplish that purpose. If regarded as a *feoffment* it is said that the legal estate would be executed in the *heirs* of Mrs. Richardson, but that she herself would take but a mere equitable life estate.

Whether the present deed, as an abstract question, be a *feoffment* or a *bargain and sale*, is one more difficult than important for us to decide. If it be a case where the *intention* of the grantor is to prevail against the strict rules of interpretation, then this court will construe the deed as a *feoffment* or a *bargain and sale* as will most effectually accomplish that intention.

In this connection it becomes necessary to inquire when the legal estate vests in the trustee, and thereby becomes a trust estate, or when it vests in the *cestui que use*, under the statute of uses.

A use is, where the legal estate of lands was in a certain person, and a trust was also reposed in him, that some other person should take and enjoy the rents and profits. In other words, a use was a mere confidence in a friend, (before the statute of uses,) that the feoffees to whom the lands were given, should permit the feoffor, and his heirs, and such other person as he might designate, to receive the profits of the land. Gilbert on Uses, 1.

The whole system of uses, however, was abolished or remodeled by the statute of 27 Henry 8, chap. 10, commonly known as the Statute of Uses. By the provisions of that statute the use was transferred into possession by converting the estate or interest of the *cestui que use* into a legal estate, and by destroying the intermediate estate of the feoffee. The strict construction which was given to this statute by the judges of its time, and the inconvenience and injustice which thereby followed, led, after a lapse of time, through the interposition of a court of chancery, and the ingenuity and learning of lawyers, to the establishment of a regular and enlightened system of trusts. In this way, uses were partially revived under the name of trusts. In regard to this revival of the equity jurisdiction in respect to trusts, Lord Mansfield has said in *Burgess* vs. *Wheate*, 1 Bl. R. 123, "that it has not only remedied the mischiefs of uses so much complained of, but has given occasion to raise up a system of equity, noble, rational and uniform, in place of a system at once unjust and inconvenient. Trusts are made to answer the exigencies of families, and all purposes, without producing one inconvenience, fraud or private mischief, which the statute of Henry 8, meant to avoid."

A trust therefore is a use not executed under the statute of Hen. 8, in the *cestui que use*, but the legal estate is vested in the grantee or trustee.

It becomes, however, frequently a matter of difficult solution to determine when the estate is vested under the statute in the *cestui que use*, or when as a *trust* it vests in the trustee; and the present case is one by no means free from difficulty on this point.

The inquiry here is, in whom did the legal estate vest under the present deed? It is to be observed that such a trust as is here contended for, might readily have been created by express terms: as, for instance, if the property had been conveyed to Ridgely and his heirs, to the use, or unto the use of him and his heirs in trust for Mrs. Richardson, it would have been a complete disposition of the whole legal estate to the trustee. 2 Crabb's Law of Real Prop. 508. In such a case the use and possession which constitute the legal estate would be vested in the trustee, while the rents and profits

would belong to the *cestui que use*. But the supposed case is not this case. If there is a trust in Mrs. Richardson it is not created by express, technical terms, but it results from the *intention* of the grantor to do so, as manifested upon the face of the deed, an intention so clear as not to be defeated or controlled by the strict rules of interpretation. It is clear that the mere interposition of a trustee to protect and secure a trust estate in a third person even though a married woman, will not prevent the use from being executed in the *cestui que use*, unless there is attached to the trustee the performance of some active functions or duties in order to support the trust. And a distinction has been taken between a devise or deed to a person in trust *to collect and pay over* the rents and profits to another, and a devise in trust to permit another to *enjoy* the rents and profits. In the first, the use is executed in the trustee, in the second, in the *cestui que use*. It would follow then, were Mrs. Richardson not a married woman, or were not the estate by the terms of the deed limited to her *sole and separate* use, independent of her husband, that this would be a conveyance under the statute, and would vest the legal estate in her, notwithstanding her coverture, or the provision that she was to have but a life estate. But in the present case the deed provides that the property shall be held in trust "for her own proper use and benefit, notwithstanding her coverture," &c., and "as if she was sole or unmarried." As has already been intimated, in all cases where a deed or will involves an object or purpose which cannot be carried into operation without the active agency of the trustee, such as the collecting and paying over of the rents and profits of land to a married woman for her sole and separate use, the execution of conveyances, &c., then it becomes a special trust, and not a use executed in her; and the question in this case, is, does the deed impose such active duties upon the trustees as will render it necessary for him to have the legal estate to discharge those duties, or is he a mere nominal, inactive agent, who is embraced within the Statute of Uses?

Most of the elementary writers broadly assert, that where the trustee is to hold in trust for the *sole and separate* use of a married woman, it is a trust, and not a use executed under the statute.

1 Cruise Dig. 456; 2 Crabb's Law of Real Prop. 509; Clancy on Hus. and Wife, 256. It is, however, to be regretted, for the sake of the simplification of this question, that the adjudications cited by the books, do not with unanimity sustain the proposition to the length to which it is stated. Most of the cases cited by the text writers will be found to relate to deeds or wills which impose upon the trustee some active functions, such as collecting and paying over of rents, &c., and while therefore they do not contradict the proposition, they notwithstanding do not sustain it as it is broadly announced. *Nevil* vs. *Saunders*, 1 Vern. 415; *Say and Seal* vs. *Jones*, 1 Ab. Equity Cases, 383; 8 Viner's Abr. 262; Lord Ch. J. Holt, in *South* vs. *Alleine*, 1 Salk. 228; *Griffith* vs. *Smith*, Moore, 753; *Bush* vs. *Allen*, 5 Mod. 63; and a number of other cases to the same purpose might be cited.

The intention of the grantor is to prevail in cases like the present, but with this qualification, that it must not contravene or defeat the established rules of construction, or in other words the intention is to be ascertained by the legal rules of interpretation. Unless therefore this deed, in accordance with one of those rules assigns to the trustee the performance of some duty necessary for the enjoyment of the estate by the *feme covert*, the legal estate would not vest in the trustee. It would seem to follow as a necessary consequence, from the very nature of the present transaction, that a deed to a trustee for *the sole and separate use* of a married woman, would imply that the trustee's aid was invoked, and his active services required, to support the independent character of the wife. The rights and powers of married women are ordinarily merged in those of their husbands, and whenever it becomes important to invest her with sole and independent powers, it becomes necessary that that character should be exercised through the medium of a trustee. It is now settled that where bequests or conveyances are made to married women for their separate use, without the nomination of trustees, the husbands in equity will be considered as trustees for their wives, and will be required to comply with the intention of the donor. (Clancy on Hus. and Wife, 257.) A separate estate in real property could not be enjoyed by

a married woman unless through the interposition of a trustee, which circumstance of itself would imply the performance of some active duties on his part. Not so, however, with persons not laboring under the same disabilities with married women. In such cases no intervening agent is necessary to enable them to enjoy the property, and therefore the legal estate is vested in them when it would not be in a *feme covert.* Thus in the case of *Broughton* vs. *Langeley*, 2 Ld. Raym. 873, where lands were devised to trustees and their heirs, to the intent to permit A to receive the rents for his life, &c., it was determined that this would have been a plain trust at common law, and as such executed by the statute. And so it would have been even if the *cestui que trust* were a married woman; provided the estate was not limited to her sole and separate use.

It is true that there are some cases which have carried this doctrine so far as to embrace within its operation deeds and wills conveying property *to married women for their separate use*, and have declared the estate to be executed under the statute in the *feme covert.* The only cases brought to our notice *favoring* this doctrine are *Williams* vs. *Waters*, 14 Mees. & Wels. 166; *Douglas* vs. *Congreve*, 1 Beavan, 59; and *South* vs. *Alleine*, 1 Salk. 228. In the first of those cases, *Williams* vs. *Waters*, it would seem that a different interpretation would have been given to the instrument by a Court of Chancery, from a remark made by Rolfe, Baron, in his opinion. He observed "it is said we are to construe the deed otherwise, because so the intention of the parties will be effected; but so it may in other ways; it will now, by the interposition of a court of equity." And Baron Parke says, "we cannot collect clearly from the words of the deed, that they intended to give the trustees an *active trust*, to exclude the husband from control, by giving the estate to the trustees in order to pay over the rents and profits to the wife." Thus this case sanctions the principle, that where an *active trust* is imposed upon the trustee he takes the legal estate. The case of *Douglas* vs. *Congreve* is, in important particulars, dissimilar from the case now before us. There, the devise was to the wife for her life, for her independent use and benefit, followed by a

direct devise after her death, to her husband, for his natural life with remainder to the use of the heirs of her body, &c. The Court decided, that the strict rules of construction were to prevail, because an intention to the contrary was not sufficiently manifest on the face of the will. The case of *South* vs. *Alleine*, it must be admitted, directly supports the views of the appellee's counsel. But the authority of that case is greatly weakened, if not entirely overthrown, by the fact that C. J. Holt dissented from the opinion of Rokesby and Eyre, justices, and that the opinion of the chief justice has been repeatedly sustained by subsequent decisions of the highest authority.

The position assumed by the counsel for the appellee, that it does not necessarily follow by vesting the legal estate in the wife, that thereby you establish the marital rights of the husband in oppositition to the contrary intention of the grantor, we think is not sustained by the authorities. In most of these cases it is conceded, that by executing the use in the wife the husband acquires control over the property, and that very result is assigned as a reason why a different construction should be given to the instrument, in order to effectuate the intention of the grantor. In the case of *Bush* vs. *Allen*, 5 Mod. 63, Justice Rokesby in reply to the argument that the legal estate vested in the wife, remarked, "but then the husband shall intermeddle, when the devisor intended to exclude him." And in the great case upon this subject, *Harton* vs. *Harton*, 7 Term R. 652; Lord Kenyon said, "that whether this were a use executed in the trustees or not must depend upon the intention of the devisor. This provision was made to secure to a *feme coverte* a separate allowance, to effectuate which it was essentially necessary that the trustees should take the estate, with the use executed, for otherwise the husband would be entitled to receive the profits, and so defeat the object of the devisor." And also in the case of *Williams* vs. *Waters*, 14 Mees. & Wels. 166; Parke, Baron, concedes, that the husband could not be excluded if the legal estate vested in the wife.

In the consideration of this case it would be difficult for us to refer to the numerous cases which relate to the subject, much more

to attempt to reconcile them with each other. That there is some conflict of opinion upon the subject, cannot be denied. The later, and more modern decisions, however, seem to favor a more liberal construction of deeds and wills in order to reach the real intention of their makers, and therefore in all cases where an estate is devised or conveyed to trustees for *the separate use of a married woman* and her heirs, this Court will, if possible, so construe the instrument as to vest the legal estate in the trustees, because such a construction will best effectuate the intention of the donor. We think this conclusion would follow from the general principles which we have endeavored to maintain in this opinion, and is warranted by a current of decisions of the highest weight and authority. The case of *Harton* vs. *Harton*, 7 Term R. 652, fully sustains our views, and no higher authority can be invoked on any subject than that of Lord Kenyon. Clancy on Husband and Wife, 256, broadly maintains the very proposition for which we are contending. He says, "where lands are devised in trust, as to the rents and profits, for the sole and separate use of a married woman, it is immaterial whether the trust be declared to be "to *pay* the rents and profits to her" or "to *permit* her to receive the rents and profits," as in either case, it would be held that the use was not executed. In addition to the cases we have already cited, we refer to *Hawkins* vs. *Luscombe*, 2 Swans. 391; *Ayer* vs. *Ayer*, 16 Pick. 327; *Franciscus* vs. *Reigart*, 4 Watts, 109; *The Escheator of St. Phillips and St. Michaels'* vs. *Smith*, 4 McCord, 452. The cases in Pickering and McCord's Reports are in all respects, like the case we are now considering, and fully sustain the conclusions to which we have come. In both those cases the question grew out of a *deed*, and very similar to the one now before us. In each, the only duty imposed upon the trustee was to hold the estate for the *sole and separate* use of the wife, and it was held in both cases that, because a separate provision was intended to be made for the wife, it was sufficient to prevent the execution of the estate in her. In the case of *Ayer* vs. *Ayer*, the Court has gone quite at length into the subject, and reviewed many of the leading cases relating to it.

It has been urged that more strictness is required in construing deeds than wills, and that as this is a deed the technical rules of construction should apply, with unbending force. To this proposition we do not assent. Cruise (1 vol. 459) says, that the same mode of construction is adopted in cases of deeds as in cases of devises, in questions like the present; and the same rule is recognized in *Ayer* vs. *Ayer*, 16 Pick. 330.

The case of *Matthews' Lessee* vs. *Ward* (10 Gill & Johns. 443), has been pressed upon us, as a controlling authority in support of the proposition that the present deed should be treated as a deed of *bargain and sale.* In this respect we do not concur with the appellee's counsel. That case has no especial bearing upon the one we are now considering, except it be to establish the general proposition that deeds of *bargain and sale* have nearly superseded all other modes of conveyance for passing real estate in Maryland, and the other more important and pertinent principle to the present controversy, that our courts, in construing deeds, will effectuate, as far as possible, the intention of the grantor. Archer, J., who delivered the opinion in *Matthews* vs. *Ward*, admits expressly that the deed in that case might be construed to be a *feoffment*, if the intention of the grantor would warrant such a construction, and it is declared to be a deed of bargain and sale, because such a view comports with what was supposed to be the intention of the grantor. Whenever a conveyance may take effect either at common law or under the statute of uses, it shall operate at the common law, unless the intention of the parties appears to the contrary. 2 Saund. on Uses and Trusts, 50, (*Marg.*)

We are of opinion, therefore, that the present deed creates but a mere equitable life estate in Mrs. Richardson; and that it executes the legal estate in her heirs.[1]

[1] The rest of this opinion, on a question of Equity practice in Maryland, is omitted for want of space.—*Ed. Law Register.*